

§ 40.354 Determination of tax and method of payment.

Except for removals without payment of tax and transfers in bond, as authorized by law, no cigarette papers and tubes shall be removed until the taxes imposed by section 5701, I.R.C., have been determined. The payment of taxes on cigarette papers and tubes which are removed on determination of tax shall be made by return in accordance with the provisions of this subpart.

(72 Stat. 1417; 26 U.S.C. 5703)

§ 40.355 Return of manufacturer.

(a) *Requirement for filing.* A manufacturer of cigarette papers and tubes shall file, for each factory, a semimonthly tax return on ATF Form 5000.24. A return shall be filed for each semimonthly return period regardless of whether cigarette papers and tubes were removed subject to tax or whether tax is due for that particular return period.

(b) *Waiver from filing.* The manufacturer need not file a return for each semimonthly return period if:

(1) Cigarette papers and tubes were not removed subject to tax during the period, and

(2) The regional director (compliance) has granted a waiver from filing in response to a written request from the manufacturer.

(c) *Semimonthly return periods.* Except as provided by paragraph (g) of this section, semimonthly return periods shall run from the first day of the month through the 15th day of the month, and from the 16th day of the month through the last day of the month.

(d) *Preparation and filing.* The return shall be executed and filed with ATF in accordance with the instructions on the form.

(e) *Remittance of tax.* Except as provided in § 40.357, remittance of the tax, if any, shall accompany the return.

(f) *Time for filing.* Except as provided by paragraph (g) of this section, for each semimonthly return period, the return shall be filed not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the

return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday or legal holiday.

(g) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1) Except as provided in paragraph (g)(2) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16-26, no later than September 29. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 27-30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 40.357, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and remittance, for the period September 16-25, no later than September 28. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 26-30, no later than October 14.

(3) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (g)(1) of this section, if the amount paid no later than September 29 is not less than $\frac{11}{15}$ (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (g)(2) of this section, if the amount paid no later than September 28 is not less than two-thirds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(4) *Last day for payment.* If the required due date for taxpayment for the

periods September 16–25 or September 16–26, as applicable, falls on a Saturday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(Approved by the Office of Management and Budget under Control Number 1512–0467)

§ 40.356 Adjustments in the return of manufacturer.

Adjustments may be made in Schedules A and B of the manufacturer's semimonthly tax return, ATF Form 5000.24, as provided in this section. Schedule A of the return will be used where an unintentional error in a previous return resulted in an underpayment of tax. Schedule B of the return will be used where an unintentional error in a previous return resulted in an overpayment of tax, or where notice has been received from the regional director (compliance) that a claim for allowance of tax has been approved. In the case of an overpayment, the manufacturer shall have the option of filing a claim on ATF Form 2635 (5620.8) for refund or taking credit in Schedule B of the return, both subject to the period of limitations prescribed in 26 U.S.C. 6511. Any adjustment made in a return must be fully explained in the appropriate schedule or in a statement attached to and made a part of the return in which such adjustment is made.

(72 Stat. 1417, 68A Stat. 791; 26 U.S.C. 5703, 6402)

§ 40.357 Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five millions dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 275 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of taxes on tobacco products, cigarette papers, and cigarette tubes during the succeeding calendar year. Payment of taxes on tobacco products, cigarette papers, and cigarette tubes in any other form of remittance, as authorized in § 40.355, is

not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including tobacco products, cigarette papers, and cigarette tubes brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR §§ 1.1563–1 through 1.1563–4. Also, the rules for a “controlled group of corporations” apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(3) A taxpayer who is required by this section to make remittances by EFT shall make a separate EFT remittance and file a separate return, ATF Form 5000.24, for each factory from which cigarette papers or cigarette tubes are withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 275 of this chapter during the previous calendar year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an